

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3029 of 1989

Date of decision: 10-12-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAVJIBHAI V DESAI

Versus

SP RECOVERY OFFICER CO-OP DEPT

Appearance:

MR MC BHATT for Petitioner

MR AJ SHASTRI for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10-12-1996

C.A.V. JUDGEMENT

The petitioner has prayed in the petition for quashing the certificate issued by respondent No.2 under section 106 of the Gujarat Cooperative Societies Act, 1961 ('the Act'), and further prayer has been made to quash the recovery proceedings instituted by respondent No.1 and order annexure-B and also to quash the further proceedings to put respondent No.5 in possession of land

in dispute.

2. It is not in dispute that the petitioner was member of Amar Seva Sahakari Mandli Ltd., a registered cooperative society. The counsel for the respondents made statement before this court that the petitioner was the president of the said society. This statement has not been controverted by the counsel for the petitioner. The petitioner was owner and occupier of the land bearing Survey Nos.163 and 277 of village Amar, Taluka Kutiyana, District Junagadh. The petitioner has taken loan from the Society and as usual, as it is the practice in this country, he has not repaid the said amount. Respondent No.4 has started proceedings against the petitioner for recovery of the loan. The District Registrar, Junagadh, issued certificate under section 106 of the Act settling the dues at Rs.31,153 with running interest. The certificate was sent for recovery of the amount to the Special Recovery Officer, Cooperative Department. The land of survey Nos.163 and 277 was attached under the provisions of the Land Revenue Code and auctioned. Respondent No.5 was the highest bidder and the bid was accepted in his favour and possession of the land was given to him on 30th January, 1984. The petitioner filed application to the District Registrar against the order of confirmation of the sale and delivery of possession to respondent No.5. Copy of the said application has not been filed by the petitioner along with this special civil application. The aforesaid application of the petitioner has been decided by the District Registrar (respondent No.2 herein) and the petitioner has been informed under letter dated 21st May, 1984 that the auction of the land in question was properly conducted and the possession of the land has been given by the special recovery officer. Hence the petitioner filed this special civil application.

None of the respondents has filed reply to the special civil application.

3. In this special civil application the petitioner has challenged the certificate issued under section 106 of the Act as well as order annexure-B dated 6-2-1984 made on the application of the petitioner, and the further proceedings and possession delivered to respondent No.5. Possession has been given to respondent No.5 on 31st January, 1984. The application of the petitioner dated 6-2-1984 has been decided by the respondent District Registrar on 21st April, 1984. This petition has been filed by the petitioner on 5th April, 1989.

4. Learned counsel for the petitioner contended that the District Registrar has committed serious illegality and acted contrary to the provisions of section 106 of the Act as well as the principles of natural justice in issuing certificate impugned in this writ petition. It has next been contended that the provisions of section 106 of the Act contain inbuilt procedure to be followed, i.e. the petitioner should have been given notice and opportunity of hearing and only after satisfying that proper investigation was made the certificate should have been issued and not otherwise. Thirdly, it is contended that when the certificate itself was bad in law then the consequential proceedings taken in pursuance thereof automatically become bad in law and the same should not be allowed to stand by this court, and possession of the land in dispute should be restored to the petitioner. On the other hand learned counsel for the respondents contended that the petitioner has not challenged at any stage prior to the filing of this writ petition the certificate issued by respondent No.2 under section 106 of the Act. It has next been contended that under the application dated 6-2-1984 the only objection raised by the petitioner was against the auction sale of the land and not against the issue of certificate under section 106 of the Act. This is clearly borne out from annexure-C, the communication which has been made by respondent No.2 to the petitioner deciding the aforesaid application. Carrying further this contention, counsel for the respondent contended that the petitioner was the President of the Society, and he was not an ordinary or lay man as tried to be projected by the counsel for the petitioner. The petitioner has not challenged the validity of the certificate issued under section 106 of the Act at any point of time earlier to filing of this petition and as such this plea is not available to him in this special civil application. The counsel for the respondents further contended that the delay in filing the writ petition is substantial and this petition suffers from the defect of delay and laches. The auction purchaser was given possession of the land on 30th January, 1984. His right has accrued thereon and the petitioner filed this petition after more than five years therefrom. When third person's rights are settled in the land, the delay has to be taken seriously and the petition deserves to be dismissed only on that ground.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The petitioner has not submitted a copy of the application dated 6-2-1984 which has been submitted by him to the District Registrar of Cooperative Societies,

Junagadh. In absence of the application, adverse inference has to be drawn against the petitioner. The petitioner has not produced the document for the reason that otherwise it would have gone against him. If we go by the contents of the order annexure-C dated 21st May, 1984 I find sufficient merit in the contention raised by the learned counsel for the respondents that the petitioner has not raised any objection whatsoever in the said application against the certificate which has been issued by respondent No.2 under section 106 of the Act for recovery of the loan amount against the petitioner. Reading of the order annexure-C clearly spells out the objection which has been raised by the petitioner in his application dated 6-2-1984. The petitioner has not raised any voice against the certificate issued under section 106 of the Act and he cannot be permitted to raise this objection for the first time before this court and that too after more than five year of the auction and delivery of possession of the land to the auction purchaser. It has become a practice in this country that the persons who have taken loan from different financial institutions as well as from cooperative societies do not care to make repayment of the amount of loan in accordance with the stipulated terms and conditions on which loans are granted. Present is the case where the petitioner, President of the Society, has taken loan but he has not cared to see that the amount is repaid in time so that it may be useful for other members. In the proceedings for recovery the petitioner appears to have not cooperated. When auction of the land was made in pursuance of the certificate issued under section 106 of the Act he felt satisfied by filing application and no action whatsoever has been taken by him even after the said application was rejected on 21st May, 1984. He slept over the matter for more than five years. Only when the land in dispute was sought to be mutated in the name of the auction purchaser than the petitioner filed this petition. From these facts it clearly comes out that the petitioner was satisfied with the order made by respondent No.2 on 21st May 1984.

6. Challenge to the certificate and the auction proceedings by the petitioner at this stage in this special civil application cannot be permitted. Though the petitioner has tried to give out explanation for the delay in filing this petition but after going through the contents of para 7 thereof I am satisfied that it is nothing but a plea manufactured for the sake of explanation. It is significant to mention here that the petitioner has not filed along with the special civil application affidavit of the counsel to whom he had given

the papers for filing this petition. Such plea can be manufactured at any time and it cannot be taken to be sufficient explanation for the delay. Normally delay in filing writ petition, after the same has been admitted, is not taken to be serious by the court. But generally there are two exceptions to this rule. Firstly, where the application has been admitted without notice to the other side, the other side too has right to raise this objection at the first available opportunity. This special civil application has been admitted on 21st September, 1989 and it has come up for hearing in the year 1996 and that is the stage where respondent No.2 has raised this objection. In case the aforesaid rule is to be applied to this category of cases, then though there is culpable delay and laches in filing the petition the responsibility may be on the part of the respondent to raise this objection. The respondents have valuable right of defence on the ground of delay and laches in filing the writ petition and that cannot be allowed to be defeated merely because this petition has been admitted by this court, though without hearing them. Secondly, the delay in case where third party rights are created has to be seriously looked into. Respondent No.5 has purchased the land in the open auction. He is a bona fide purchaser of the land. He paid the price for the land and he has been given possession of the same on 30th January, 1984. By lapse of time respondent No.5 has acquired right in the land. He settled in the land and he might have sentimental attachment to the land. It is also likely that respondent No.5 would have spent considerable amount in developing the land. In case this writ petition is allowed then the bona fide purchaser of the land will unnecessarily be put in difficulty. He is not at fault. The petitioner is the person who has allowed issue of certificate under section 106 of the Act, proceedings of auction and delivery of possession of land to respondent No.5 and only thereafter, i.e. on 6th February, 1984, he raised objection against the auction proceedings, and not against the certificate issued under section 106 of the Act. Though his objection was decided on 21st May, 1984 thereafter he slept over the matter for five years. Taking into consideration the facts and circumstances of the case I do not find any substance in the special civil application.

7. In the result the special civil application fails and the same is dismissed. Rule discharged. It is a case where cost has to be awarded to respondent No.5, but nobody has put appearance on his behalf. Hence no order as to costs.

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